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10 Attorneys for Plaintiff

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13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15  
16

17 **Scott Johnson**

18 Plaintiff,  
19 v.  
20  
21 **Hon Management, Inc.**, a  
22 California Corporation;  
23  
24 **Allfo One Korea, LLC**, a California  
25 Limited Liability Company  
26  
27 Defendants.  
28

**Case No.**

29  
30 **Complaint For Damages And  
31 Injunctive Relief For Violations  
32 Of: Americans With Disabilities  
33 Act; Unruh Civil Rights Act**

34  
35 Plaintiff Scott Johnson complains of Hon Management, Inc., a  
36 California Corporation; Allfo One Korea, LLC, a California Limited Liability  
37 Company; and alleges as follows:

38  
39  
40 **PARTIES:**

41  
42 1. Plaintiff is a California resident with physical disabilities. Plaintiff is a  
43 level C-5 quadriplegic. He cannot walk and also has significant manual  
44 dexterity impairments. He uses a wheelchair for mobility and has a specially  
45 equipped van.

1       2. Defendant Hon Management, Inc. owned the real property located at  
2 or about 595 E El Camino Real, Sunnyvale, California, between October  
3 2020 and February 2021.

4       3. Defendant Hon Management, Inc. owns the real property located at or  
5 about 595 E El Camino Real, Sunnyvale, California, currently.

6       4. Defendant Allfo One Korea, LLC owned 10 Butchers Korean BBQ  
7 located at or about 595 E El Camino Real, Sunnyvale, California, between  
8 October 2020 and February 2021.

9       5. Defendant Allfo One Korea, LLC owns 10 Butchers Korean BBQ  
10 (“Restaurant”) located at or about 595 E El Camino Real, Sunnyvale,  
11 California, currently.

12       6. Plaintiff does not know the true names of Defendants, their business  
13 capacities, their ownership connection to the property and business, or their  
14 relative responsibilities in causing the access violations herein complained of,  
15 and alleges a joint venture and common enterprise by all such Defendants.  
16 Plaintiff is informed and believes that each of the Defendants herein is  
17 responsible in some capacity for the events herein alleged, or is a necessary  
18 party for obtaining appropriate relief. Plaintiff will seek leave to amend when  
19 the true names, capacities, connections, and responsibilities of the  
20 Defendants are ascertained.

21

22       **JURISDICTION & VENUE:**

23       7. The Court has subject matter jurisdiction over the action pursuant to  
24 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans  
25 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

26       8. Pursuant to supplemental jurisdiction, an attendant and related cause  
27 of action, arising from the same nucleus of operative facts and arising out of  
28 the same transactions, is also brought under California’s Unruh Civil Rights

1 Act, which act expressly incorporates the Americans with Disabilities Act.

2 9. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is  
3 founded on the fact that the real property which is the subject of this action is  
4 located in this district and that Plaintiff's cause of action arose in this district.

5

6 **FACTUAL ALLEGATIONS:**

7 10. Plaintiff went to the Restaurant in October 2020 with the intention to  
8 avail himself of its goods or services motivated in part to determine if the  
9 defendants comply with the disability access laws. Not only did Plaintiff  
10 personally encounter the unlawful barriers in October 2020, but he wanted  
11 to return and patronize the business several times but was specifically  
12 deterred due to his actual personal knowledge of the barriers gleaned from  
13 his encounter with them.

14 11. The Restaurant is a facility open to the public, a place of public  
15 accommodation, and a business establishment.

16 12. Unfortunately, on the date of the plaintiff's visit, the defendants failed  
17 to provide wheelchair accessible dining surfaces in conformance with the  
18 ADA Standards as it relates to wheelchair users like the plaintiff.

19 13. The Restaurant provides dining surfaces to its customers but fails to  
20 provide wheelchair accessible dining surfaces.

21 14. One problem that plaintiff encountered is the lack of sufficient knee or  
22 toe clearance under the outside dining surfaces for wheelchair users.

23 15. Plaintiff believes that there are other features of the dining surfaces  
24 that likely fail to comply with the ADA Standards and seeks to have fully  
25 compliant dining surfaces available for wheelchair users.

26 16. On information and belief the defendants currently fail to provide  
27 wheelchair accessible dining surfaces.

28 17. These barriers relate to and impact the plaintiff's disability. Plaintiff

1 personally encountered these barriers.

2 18. Even though the plaintiff did not encounter the barrier, defendants  
3 place dining tables in front of and on the parking space marked and reserved  
4 for persons with disabilities.

5 19. As a wheelchair user, the plaintiff benefits from and is entitled to use  
6 wheelchair accessible facilities. By failing to provide accessible facilities, the  
7 defendants denied the plaintiff full and equal access.

8 20. The failure to provide accessible facilities created difficulty and  
9 discomfort for the Plaintiff.

10 21. The defendants have failed to maintain in working and useable  
11 conditions those features required to provide ready access to persons with  
12 disabilities.

13 22. The barriers identified above are easily removed without much  
14 difficulty or expense. They are the types of barriers identified by the  
15 Department of Justice as presumably readily achievable to remove and, in  
16 fact, these barriers are readily achievable to remove. Moreover, there are  
17 numerous alternative accommodations that could be made to provide a  
18 greater level of access if complete removal were not achievable.

19 23. Plaintiff will return to the Restaurant to avail himself of its goods or  
20 services and to determine compliance with the disability access laws once it  
21 is represented to him that the Restaurant and its facilities are accessible.  
22 Plaintiff is currently deterred from doing so because of his knowledge of the  
23 existing barriers and his uncertainty about the existence of yet other barriers  
24 on the site. If the barriers are not removed, the plaintiff will face unlawful and  
25 discriminatory barriers again.

26 24. Given the obvious and blatant nature of the barriers and violations  
27 alleged herein, the plaintiff alleges, on information and belief, that there are  
28 other violations and barriers on the site that relate to his disability. Plaintiff

1 will amend the complaint, to provide proper notice regarding the scope of this  
2 lawsuit, once he conducts a site inspection. However, please be on notice that  
3 the plaintiff seeks to have all barriers related to his disability remedied. See  
4 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
5 encounters one barrier at a site, he can sue to have all barriers that relate to  
6 his disability removed regardless of whether he personally encountered  
7 them).

8

9 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS  
10 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
11 Defendants.) (42 U.S.C. section 12101, et seq.)

12 25. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
13 again herein, the allegations contained in all prior paragraphs of this  
14 complaint.

15 26. Under the ADA, it is an act of discrimination to fail to ensure that the  
16 privileges, advantages, accommodations, facilities, goods and services of any  
17 place of public accommodation is offered on a full and equal basis by anyone  
18 who owns, leases, or operates a place of public accommodation. See 42  
19 U.S.C. § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 20 a. A failure to make reasonable modifications in policies, practices,  
21 or procedures, when such modifications are necessary to afford  
22 goods, services, facilities, privileges, advantages, or  
23 accommodations to individuals with disabilities, unless the  
24 accommodation would work a fundamental alteration of those  
25 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 26 b. A failure to remove architectural barriers where such removal is  
27 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
28 defined by reference to the ADA Standards.

- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

9        27. When a business provides facilities such as dining surfaces, it must  
10      provide accessible dining surfaces.

11        28. Here, accessible dining surfaces have not been provided in  
12 conformance with the ADA Standards.

13        29. When a business provides parking for its customers, it must provide  
14        accessible parking.

15        30. Here, accessible parking has not been provided in conformance with  
16 the ADA Standards.

17       31. The Safe Harbor provisions of the 2010 Standards are not applicable  
18 here because the conditions challenged in this lawsuit do not comply with the  
19 1991 Standards.

32. A public accommodation must maintain in operable working condition those features of its facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

23       33. Here, the failure to ensure that the accessible facilities were available  
24 and ready to be used by the plaintiff is a violation of the law.

26 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL  
27 RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
28 Code § 51-53.)

1       34. Plaintiff repleads and incorporates by reference, as if fully set forth  
2 again herein, the allegations contained in all prior paragraphs of this  
3 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, *inter alia*,  
4 that persons with disabilities are entitled to full and equal accommodations,  
5 advantages, facilities, privileges, or services in all business establishment of  
6 every kind whatsoever within the jurisdiction of the State of California. Cal.  
7 Civ. Code §51(b).

8       35. The Unruh Act provides that a violation of the ADA is a violation of the  
9 Unruh Act. Cal. Civ. Code, § 51(f).

10      36. Defendants’ acts and omissions, as herein alleged, have violated the  
11 Unruh Act by, *inter alia*, denying, or aiding, or inciting the denial of,  
12 Plaintiff’s rights to full and equal use of the accommodations, advantages,  
13 facilities, privileges, or services offered.

14      37. Because the violation of the Unruh Civil Rights Act resulted in  
15 difficulty, discomfort or embarrassment for the plaintiff, the defendants are  
16 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §  
17 55.56(a)-(c).)

18      38. Although the plaintiff encountered frustration and difficulty by facing  
19 discriminatory barriers, even manifesting itself with minor and fleeting  
20 physical symptoms, the plaintiff does not value this very modest physical  
21 personal injury greater than the amount of the statutory damages.

22

23      **PRAYER:**

24      Wherefore, Plaintiff prays that this Court award damages and provide  
25 relief as follows:

26      1. For injunctive relief, compelling Defendants to comply with the  
27 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
28

1 plaintiff is not invoking section 55 of the California Civil Code and is not  
2 seeking injunctive relief under the Disabled Persons Act at all.

3 2. For equitable nominal damages for violation of the ADA. See  
4 *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)  
5 and any other equitable relief the Court sees fit to grant.

6 3. Damages under the Unruh Civil Rights Act, which provides for actual  
7 damages and a statutory minimum of \$4,000 for each offense.

8 4. Reasonable attorney fees, litigation expenses and costs of suit,  
9 pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

10  
11 Dated: March 22, 2021

CENTER FOR DISABILITY ACCESS

12  
13 By:   
14

15 Amanda Seabock, Esq.  
16 Attorney for plaintiff